

# FELONY SENTENCING QUICK REFERENCE GUIDE

May, 2002

Ohio Criminal Sentencing Commission - Chief Justice Thomas Moyer, Chairman - David Diroll, Director  
Prepared with support from the Ohio Judicial Conference

**PURPOSES AND PRINCIPLES** The sentence must comply with these purposes and principles--§2929.11:

ÿ **Overriding Purposes:** Punish the offender and protect the public from future crime by the offender and others

ÿ **Principles:** Always consider the need for incapacitation, deterrence, rehabilitation, and restitution

ÿ Sentence should be commensurate with, and not demeaning to, the seriousness of offender's conduct and its impact on the victim and consistent with sentences for similar crimes by similar offenders

ÿ Do not sentence based on the offender's race, ethnicity, gender, or religion

**FACTORS TO CONSIDER IN EVERY CASE** Weigh these factors, if present:

**More Serious**--§2929.12(B):

ÿ Injury exacerbated by victim's physical or mental condition or age

ÿ Victim suffered serious physical, psychological, or economic harm

ÿ Offender held public office or position of trust and the offense related to the office or position

ÿ Offender's occupation obliged the offender to prevent the offense or to bring those committing it to justice

ÿ Offender's reputation, occupation, or office used to facilitate offense or likely to influence others' conduct

ÿ Offender's relationship with the victim facilitated the offense

ÿ Offender acted for hire or as part of organized criminal activity

ÿ Offender was motivated by prejudice based on race, ethnicity, gender, sexual orientation, or religion

ÿ Offender is a parent or other custodian and the offense was domestic violence or an assault involving a family or household member committed in the vicinity of one or more children other than the victim

ÿ Any other relevant factor(s) indicating the conduct is more serious

**Less Serious**--§2929.12(C):

ÿ Victim induced or facilitated the offense

ÿ Offender acted under strong provocation

ÿ Offender did not cause or expect to cause harm to person or property

ÿ There are substantial grounds to mitigate the offender's conduct

ÿ Any other relevant factor(s) indicating the conduct is less serious

**Recidivism More Likely**--§2929.12(D):

ÿ Offense while on bail, awaiting sentencing, on community control, PRC, etc., or after unfavorable PRC

ÿ Offender has a history of criminal convictions or juvenile delinquency adjudications

ÿ Offender has not responded favorably to sanctions previously imposed in adult or juvenile court

ÿ Offender has pattern of alcohol/drug use related to offense & does not acknowledge it or refuses treatment

ÿ Offender shows no genuine remorse

ÿ Any other relevant factor(s) indicating recidivism is more likely

**Recidivism Less Likely**--§2929.12(E):

ÿ Offender has no prior juvenile delinquency adjudication

ÿ Offender has no prior adult conviction

ÿ Offender has led a law-abiding life for a significant number of years

ÿ Offense was committed under circumstances unlikely to recur

ÿ Offender shows genuine remorse

ÿ Any other relevant factor(s) indicating recidivism is less likely

**MANDATORY PRISON TERMS** A prison term must be imposed in these cases--§2929.13(F):

ÿ **Aggravated murder** when a death sentence is not imposed, **or murder**

ÿ **Certain sex offenses:** Any rape; attempted rape with victim under 13; gross sexual imposition or sexual battery if with prior conviction for rape, FSP, GSI, or sexual battery involving victim under 13; and anyone convicted of a sexually violent predator specification

ÿ Felony **vehicular** homicides/assaults and felony OVI **when specified** by statute as mandatory

ÿ F-1, F-2, and F-3 **drug offenses when specified** by statute as mandatory

ÿ Agg. murder, murder, or any F-1, F-2, or F-3 offense of violence in a **school safety zone**

ÿ Any **repeat violent offender (RVO)** as defined in §2929.01(DD)

ÿ Any **other F-1 or F-2 when** the offender has a **prior** agg. murder, murder, F-1, or F-2

ÿ Anyone convicted of a **gun specification** (gun spec time is mandatory; the underlying offense may not be)

ÿ Anyone convicted of wearing or carrying **body armor** in committing a felony offense of violence

ÿ **Corrupt activity** (racketeering) when the most serious predicate offense is an **F-1**

- Any felony offense of violence involving **criminal gang** activity
  - Any **prison employee** convicted of illegally conveying improper items into the prison
- Length of Mandatory Prison Terms**--Selects any term from the §2929.14(A) range, **except** as follows:
- For gun, body armor, gang, and school safety zone specifications--§2929.14(D)(1), (I), & (J):
    - 6 years if automatic or muffled firearm (§2941.144 spec)
    - 3 years if other firearm used, displayed, brandished, or otherwise indicated (§2941.145 spec)
    - 1 year if other firearm not used, displayed, brandished, or otherwise indicated (§2941.141 spec)
    - 5 years if a drive-by shooting, plus the 6 or 3 year gun spec above (§2941.146 specs)
    - 2 years if wearing or carrying body armor (§2941.1411 spec)
    - 1, 2, or 3 years for participating in a criminal gang (§2941.142 spec)
    - 2 years for agg. murder, murder, or a violent F-1, F-2, or F-3 in a school zone (§2941.143 spec)
  - Maximum from basic range mandatory, 1 to 10 more years optional, if basic term inadequate to punish and demeaning to the seriousness of the offense (§2929.14(D)(2) & (3)) for the following:
    - Major drug offender (MDO)
    - Repeat violent offender (RVO) with substantial: risk of death, permanent disfigurement
    - Attempted forcible child rape
    - Corrupt activity (racketeering) when most serious predicate is an F-1
  - Other RVOs: term from basic range mandatory. If maximum from range imposed, 1-10 more optional if basic term inadequate to punish and protect and demeaning to seriousness of offense
  - Other MDO: 8 years for the sale, cultivation, or possession of >20 kg. marijuana (10 years if near school/juvenile) (§§2925.03, .04, .11)
  - At least 60 days for a 1<sup>st</sup> felony OVI and 120 days for a 2<sup>nd</sup> felony OVI as specified by statute (§4511.99)
  - At least 2 years to life for sexually violent offenses with a sexually violent predator spec (§2971.03)

**GUIDANCE ON OPTIONAL PRISON TERMS** For anyone not facing a mandatory prison term, the judge may choose a prison term or community sanction(s)--§2929.13(A), 2929.15(A), etc.

- The sentence must not impose an unnecessary burden on State or local resources--§2929.13(A)
- F-1, F-2, or "In Favor" Drug Offense:** There is a presumption in favor of a prison term--§2929.13(D)
- To rebut the presumption, court must find that non-prison sanction(s) would *both*:
    - Adequately protect the public and punish the offender because the factors indicating recidivism is less likely outweigh the factors indicating recidivism is more likely; *and*
    - Not demean seriousness of the offense because more serious factors outweigh less serious factors
  - Judge must give oral or written **reasons** for not imposing prison term--§2929.19(B)(2)(b)
    - If no prison term (or if judicial release is later granted), State has **appeal** of right--§2953.08(B)
- F-3 or "Div. C" Drug Offense:** No guidance other than purposes and principles--§2929.13(C)
- F-4, F-5, or "Div. B" Drug Offense:** Did the court find that *any* of these 9 factors apply?--§2929.13(B)(1)
- Physical harm to a person
  - Attempt or actual threat of physical harm to a person with a deadly weapon
  - Attempt or actual threat of physical harm to a person and prior conviction for causing such harm
  - Offense related to public office/position held; position obligated offender to prevent it or to bring others to justice; or offender's reputation/position facilitated the crime or likely to influence others
  - Offense was for hire or part of organized criminal activity
  - Offense was a sex offense
  - Offender served a prior prison term or was in prison at time of offense
  - Offense was committed while offender was under community control or on bail or bond
  - Offender possessed a firearm
  - If any of the 9 factors are found, a prison term must be imposed if find *both* (§2929.13(B)(2)(a)):
    - After weighing seriousness & recidivism factors, prison is consistent with purposes/principles &
    - Offender is not amenable to an available community sanction
  - If none of the 9 factors are found--§2929.13(B)(2)(b)):
    - Community control sanction(s) must be imposed if consistent with the purposes and principles
    - If prison term is imposed, judge must give oral or written **reasons**--§2929.19(B)(2)(a)
      - If a prison term is imposed, defendant has **appeal** of right--§2953.08(A)(2)

**PRISON TERMS** Select a definite term from the ranges in §2929.14(A)--See sentencing table on back page

**Shortest Term:** To be imposed if offender has not been sentenced to prison before, *unless* (§2929.14(B)):

- Offender previously served a prison term or was in prison at time of offense; *and/or*
- It demeans the seriousness of the offense or does not adequately protect the public

**Longest Term:** *Only* if one of the following (§2929.14(C)):

- ÿ Offender committed the worst form of the offense
  - ÿ Offender poses the greatest likelihood of committing future crimes
  - ÿ A statute requires the maximum term from basic range (e.g., MDOs, certain RVOs, etc.)
- ÿ Judge must give oral or written **reasons** for imposing longest term--§2929.19(B)(2)(d) & (e)
  - ÿ If the longest term is imposed, defendant has **appeal** of right--§2953.08(A)(1)
- Consecutive Prison Terms Required:** When (§2929.14(E)):
  - ÿ Any gun spec (including drive-by shooting) or body armor spec is imposed;
  - ÿ An inmate or escapee commits certain crimes (e.g., riot, escape, etc.); or
  - ÿ Robbery if take a deadly weapon from a law enforcement officer or if a driver willfully flees police officer
- Consecutive Prison Terms Optional :** If necessary to protect/punish, not disproportionate, *and* find (§2929.14(E)(4)):
  - ÿ Crimes committed while awaiting trial/sentencing, under sanction, or under post-release control;
  - ÿ Harm so great or unusual that a single term does not adequately reflect seriousness of the conduct; *or*
  - ÿ Offender's criminal history shows that consecutive terms are needed to protect the public
- ÿ Judge must give oral or written **reasons** for imposing optional consecutive terms--§2929.19(B)(2)(c)
  - ÿ Defendant may **appeal** consecutives exceeding the maximum for the worst offense involved--§2953.08(C)
- RESIDENTIAL COMMUNITY SANCTIONS** Include, but not limited to (§2929.16; see §2929.01 for definitions):
  - ÿ Community-based correctional facility (CBCF) for up to 6 months
  - ÿ Jail or minimum security jail for up to 6 months (or up to 1 year for certain F-4 OVIs)
  - ÿ Halfway house (no stated time limit, depends on program)
  - ÿ Alternative residential facility (another place for employment, training, education, treatment, etc.)
- NON-RESIDENTIAL SANCTIONS** Include, but not limited to (§2929.17; see §2929.01 for definitions):
  - ÿ Day reporting (report to an approved location to participate in work, training, treatment, etc.)
  - ÿ House arrest and/or electronic monitoring
  - ÿ Community service for up to 500 hours
  - ÿ Drug treatment--Inpatient, outpatient, or both
  - ÿ Drug and alcohol use monitoring (testing)
  - ÿ Intensive probation supervision (frequent contact with supervising officer, etc.)
  - ÿ Basic probation supervision (contact with a supervising officer subject to conditions set by the court)
  - ÿ Monitored time (under court control subject to no conditions other than leading a law-abiding life)
  - ÿ Curfew (be at a designated place at a specific time)
  - ÿ Employment (obtain or retain a job)
  - ÿ Education or training
  - ÿ Victim-offender mediation (with the victim's consent)
  - ÿ License violation report (inform an agency granting a business or professional license of the violation)
  - ÿ Counseling generally. In particular, if a parent or custodian sentenced for domestic violence or assault involving a family or household member committed in the vicinity of a child other than the victim
- FINANCIAL SANCTIONS** Include, but not limited to (§2929.18; see §2929.01 for definitions):
  - ÿ Restitution (for *any* economic loss)
  - ÿ Fines, including:
    - ÿ Conventional fine--From the ranges in §2929.18(A)(3)--See sentencing table on back page
      - ÿ For the fine when the offender is an organization, see §2929.31
    - ÿ Day fine (standard % of daily income over # of days set based on seriousness of the offense)
    - ÿ Super fine (up to \$1 million for F-3 or higher drug offenses, murders, and others--§2929.25)
    - ÿ Mandatory drug fines for F-3 or higher drug offenses (≥ 50% of the maximum conventional fine)
    - ÿ For drug trafficking, *additional* fine = to value of property involved in offense, or, if no property or undetermined value, additional fine under the (A)(3) ranges--§2929.18(B)(4). Proceeds to substance abuse programs (§2925.03(H)). Also, if the mandatory + (B)(4) fines are < conventional fine limit, court may impose added fine up to limit. Proceeds to law enforcement (§2929.18(B)(6))
    - ÿ Mandatory fines for felony OVI, as specified in §4511.99
  - ÿ Reimbursement of the costs of administering any sanction
  - ÿ Pay-for-stay in jail, prison, etc. up to actual costs (jail repayment must be authorized by local govt.)
- SENTENCING HEARING** Duties in addition to giving reasons for certain sentences, noted above--§2929.19:
- When Imposing a Prison Term--§2929.19(B)(3):**
  - ÿ State a prison term, including a term from basic range + any gun spec, RVO, MDO, consecutive, etc.

- ÿ Notify that, as part of sentence, **post-release control** is mandatory for F-1, F-2, violent F-3, or sex offense or optional (for all others), for up to 5 years (for F-1 or sex offense) or up to 3 years (for all others).
  - ÿ Notify that violator could be sent to prison for up to 9 months, with maximum for repeated violations = 50% of stated prison term. For a new felony, offender may be sent to prison for the remaining PRC period, or 12 months, whichever is greater, + a prison term for the new crime (§2929.141)
  - ÿ If a sexual predator, notify offender of duty to register under §2950.03 (§2929.19(B)(4))
  - ÿ Optional: recommend for or against boot camp or intense program prison (§§2929.19(D) & 2929.14(K)).
- When Not Imposing a Prison Term**--§2929.14(B)(5): Directly sentence to community control sanction(s) and
- ÿ Notify that, if violated, court may impose longer time, more restrictive sanction, or a specified prison term